CONTENTS

1 - EMPLOYEES
Ralph D. Mawdsley

Introduction 3
Discrimination in Employment 3
  Race 4
  Sex 6
  Age 9
  Disability 10
Substantive Constitutional Rights 14
  Speech 14
  Association 16
  Religion 17
  Privacy 17
  Substantive Due Process 18
Procedural Due Process 19
  Liberty and Property Interests 19
  Aspects of Notice 20
  Aspects of Hearing 21
Dismissal, Nonrenewal, Demotion, and Discipline 23
  Insubordination 25
  Unprofessional Conduct, Unfitness, Willful Neglect of Duty 25
  Immorality 26
  Incompetence 26
  Compliance with School Board Policies and State Statutes 27
Reduction-in-Force and Involuntary Leaves of Absence 30
  Necessity for Reduction-in-Force 30
  Elimination of Position 30
  Selection of Employees 31
  Realignment/Reassignment 31
Contract Disputes 31
  Board Policies and Contract Stipulations 32
  Administrative Regulations and Statutory Provisions 33
Tenure 39
  Tenure Status 39
  Tenure by Default or Acquiescence 39

Certification 40
Certification Standards 40
Decertification, Revocation, or Suspension 41
Conclusion 41

2 - SCHOOL GOVERNANCE
Donald F. Uerling

Introduction 45
State Education Agencies 45
State Funding 46
State Finance Plans 46
Desegregation Plans 48
Special Education 48
Allocation of Funds 49
Special Schools and School Districts 50
Charter Schools 50
Special School Districts 50
Special Schools 51
Special Governance Arrangements 51
School District Boundary Changes 53
School District Board Members 54
School District Board Meetings 55
Notice of Meetings 55
Open Meetings 56
Miscellaneous Issues 57
Powers of School District Boards 57
Statutory Authority 57
Board Policy 59
School District Financial Affairs 61
Taxing Authority 61
Bond Levy Elections 61
Use of Funds 62
School District Employment Affairs 63
Administrators 63
Teachers 65
Support Staff 67
School District Contracts 70
Goods and Services 70
Real Estate 71
Construction Contracts 71

Bidding on Construction Contracts 72
School District Facilities 73
Access 73
Miscellaneous Issues 75
School District Transportation 76
Student Claims of Mistreatment 76
Tort Liability 77
Defamation 77
Negligence 77
Claims and Suits Against the School District 78
Standing 78
Notice 78
Conclusion 79

3 - PUPILS

Carrie Y. Ausbrooks, William E. Camp, and Jane B. Huffman

Introduction 83
Issues Relating to Public School Attendance 83
Compulsory Attendance 83
Transfer of Students 84
Tuition and Fees 85
Private and Parochial Students 85
Substantive Rights of Students 87
First Amendment: Religious Rights 87
First Amendment: Freedom of Speech 89
Sexual Abuse and Harassment by Students 90
Sexual Abuse and Harassment by Employees 91
Sexual Abuse by Other Parties 97
Privacy 97
Search and Seizure 99
Instructional Issues 102
Miscellaneous 103
Sanctions for Student Misconduct 107
Generally 107
Suspension and Expulsion 108
Desegregation 112
Desegregation Plan Oversight 112
Cross-District Remedies 117
State Court Cases 117
Conclusion 117

4 - BARGAINING
Julie F. Mead

Introduction 121
Constitutional Issues 121
First Amendment 121
Fourteenth Amendment 122
Federal Statutory Issues 123
Recognition and Representational Issues 124
Rights and Obligations of Exclusive
Bargaining Representatives 125
Scope of Bargaining 126
Grievability and Arbitrability 128
Presumption and Arbitrability 128
Authority to Detemine Arbitrability 130
Procedural Issues 131
Judicial Review of Arbitration Awards 131
Salary and Benefits 131
Working Conditions 133
Dismissal and Nonrenewal 133
Reassignment and Hiring Issues 135
Reduction-in-Force 136
Impasse 136
Strikes 137
Miscellaneous 137
Conclusion 138

5 - STUDENTS WITH DISABILIITIES
Allan G. Osborne, Jr.

Introduction 141
Entitlement to Services 141
Procedural Safeguards 144
Evaluation and Classification 145
Rights of Parents or Guardians 146
Development of Individualized Education Programs 146
Change in Placement 147
Dispute Resolution 148
Administrative Hearings 149
Court Proceedings 150
Standing to Sue 152

Statute of Limitations 153
Actions Under Other Statutes 154
Placement 155
Appropriate Educational Placement 156
Least Restrictive Environment 159
Private Facilities 160
Related Services 160
Discipline 162
Remedies 163
Damages 164
Tuition Reimbursement 164
Compensatory Services 166
Attorney Fees 167
Other IDEA Issues 169
State Laws 170
Kansas 170
Missouri 171
New Jersey 171
New York 171
Discrimination Under the Rehabilitation Act, Section 504 172
Students 172
Elementary and Secondary 172
Higher Education 175
Other Section 504 Issues 176
Americans with Disabilities Act 176
Students 177
Elementary and Secondary 177
Higher Education 177
Other ADA Issues 178
Conclusion 178

6 - TORTS
William J. Evans, Jr.

Introduction 183
Negligence 183
Injuries 183
Off School Property and After School Hours 183
School Settings During School Hours 185
In School Buildings and on School Grounds 186
Negligence Defenses 188
Immunity 188

Common Law (Governmental Immunity) 188
Statutory Immunity 190
Other Defenses 191
Comparative Negligence 191
Notice of Claim 192
Liability Insurance 193
Attorney Fees 194
Tortious Interference with a Contract 194
Employee Injuries 195
Workers' Compensation 195
Defamation/Intentional Infliction of Emotional Distress 197
Constitutional Torts 199
Student Initiated Cases 199
Employee Initiated Cases 204
Conclusion 205

7 - SPORTS
Linda A. Sharp

Introduction 209
Eligibility 209
Longevity 209
Recruiting 210
Academic Eligibility 210
Transfer 211
Discipline 212
Membership in High School Athletic Association 212
Drug Testing 213
Salary Cap for Coaches 214
Postbaccalaureate Bylaw 214
Equality of Programs 215
Gender 215
Tort 218
Intentional 218
Fraudulent Misrepresentation 218
Defamation 218
Hazing 219
Section 1983 219
Negligence 221
Participants 221
Spectators 226

Employment 227
Contract Disputes 227
Collective Bargaining 228
Discrimination 229
Gender 229
Age 230
Disability 230
Miscellaneous 231
Zoning 231
Workers' Compensation 232
Open Records Act 232
Real Property 232
Broadcast Rights 233
Conclusion 233

8 - HIGHER EDUCATION
F. King Alexander and Paul W. Thurston

Introduction 237
Intergovernmental Relationships 238
Legislative Authority 238
State Authority 240
Agency Authority 241
License 242
Accreditation 242
Sunshine Laws 243
Freedom of Information 244
Taxation 244
Jurisdiction 245
Standing 246
Ownership 247
Federal Issues 247
State Action 247
Title IX 247
Eleventh Amendment Immunity 248
False Claims Act 251
Whistleblowers Protection Act 251
National Voter Registration Act 252
Constitutional Law Decisions 252
First Amendment Religion 252
Equal Protection 253

First Amendment Speech 254
Discrimination in Employment 256
Title VII 256
The Equal Pay Act 258
Age Discrimination in Employment 259
Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act 260
Employees 261
Nontenured Faculty 261
First Amendment Speech 261
Nonrenewal of Contract 261
Defacto Tenure 262
Non-Existence of Contract 263
Breach of Contract 263
Dismissal During Contract Period 264
Denial of Tenure 265
Procedural Issues 266
Tenure Review Process 266
Title VII 266
Discrimination 267
Tenured Faculty 268
Disciplinary Action 268
Indemnification 268
Dismissal for Cause 268
Denial of Due Process 270
Denial of Employee Privileges 271
Dismissal for Financial Exigency 271
All Employees 272
Grievances 272
Breach of Contract 273
Administration and Staff 274
Dismissal 274
Due Process 275
Discrimination 276
Retaliation 276
Financial Exigency 277
Contract Issues 278
Indemnification 279
Denial of Employee Benefits 280
Retirement 280
Unemployment Compensation 281
Harassment 281

Tort Liability 282
Negligence 282
Scope of Duty 282
Fraternity Hazing 282
Bodily Injury 283
Other Negligence Claims 284
Affirmative Defenses 285
Assumption of Risk 285
Contributory Negligence 285
Statutory Immunity 286
Qualified Immunity 288
Defamation 289
Worker's Compensation 290
Contract Liability 291
Contract Terms 291
Bidding 292
Contract Liability 292
Provision of Wages 292
Conclusion 293

9 - STUDENTS IN HIGHER EDUCATION
Terrence Leas

Introduction 297
Admission or Matriculation 297
Admission 297
Matriculation 299
Tuition and Fees 300
Financial Aid 300
Institutional Eligibility 300
Federal Qualifications 300
State Agency Qualifications 301
Procedures & Qualifications 302
Bankruptcy 303
Chapter 7 304
Chapter 13 306
Service Contracts 307
Collection 307
Criminal Prosecution 308
Student Organizations 308
First Amendment 308

Freedom of Speech 308
Freedom of Religion 309
Discipline 310
Nonacademic Disciplinary Action 310
Academic Discipline 312
Breach of Contract 312
Due Process 313
Racial Discrimination 314
Disability Laws 315
Federal Statutes 316
Section 1983 316
Title VI 316
Violence Against Women Act 316
Title IX 317
Disability Laws 319
Americans with Disabilities Act 319
National Voter Registration Act 320
Torts 320
Conclusion 324

10 - FEDERAL AND STATE LEGISLATION
David L. Dagley

Introduction 329
Federal Legislation 329
Higher Education Amendments of 1998 329
Agricultural Research, Extension,
and Education Reform Act 330
Workforce Investment Act of 1998 330
National Sea Grant College Reauthorization Act of 1998 330
State Legislation 330
Accountability 331
Attendance 335
Buildings and Grounds 336
Curriculum Requirements 338
Employment 340
Finance 344
Governance 346
Parental and Student Rights 347
Program Development 349
School Choice 352

School Safety 355
Students with Disabilities 358
Technology 360
Training Programs 362
Higher Education 365
Miscellaneous 367
Conclusion 367

11 - EDUCATION RELATED
David J. Sperry & Scott Ellis Ferrin

Introduction 371
Collective Bargaining 371
Disabilities 372
Drugs/Firearms 375
Employee Discipline 375
Fourth Amendment 377
Free Speech 379
Health Plans/Insurance 381
Sexual Harassment 382
Conclusion 387

12 - INTERNATIONAL LAW

AUSTRALIA
Douglas J. Stewart

Introduction 393
A Dual System of Elementary Schools 393
Secondary Schools 394
Commonwealth Involvement in Schooling 394
School Law in Australia 395
Duty of Care for Students' Physical Welfare 396
Classrooms 396
School Grounds 397
Traveling to and from School 398
Sport 399
School Excursions 399
Summary 400
Emergent Issues 400

Students' Rights 400
School Curriculum 401
Alternative School Programs 401
School Regulations 402
School Discipline 402
Student Harassment 403
Tactility 404
Educational Negligence 404
Students with Special Needs 405
Free Speech 406
Violence and Discipline 406
Miscellaneous 407

CANADA
Anwar (Andy) N. Khan

Introduction 409
Constitutional Background 409
Some Important Features of Canadian Education Law 411
Provincial and Federal Roles in Education 412
Mulitcultural Education 413
Freedom of Religion 414
Language and Denominational Schools 416
Discrimination 418
Hate Propaganda by Teachers 421
Other Rights 422
The 1998 Case on Equality 423
Search and Seizure in Schools 425
Facts and Lower Courts' Decisions 425
The Supreme Court Says Schools Come Under Different Standards 426
The Standard of "Reasonableness" 427
Conclusion 428

ENGLAND AND WALES
Neville Harris

Introduction 429
The Present Education Structure 429
"Standards Matter More than Structures" 432
The School Standards and Framework Act 1998 and Educational Provision 434

Education in the Courts 440
Special Educational Needs 440
Educational Malpractice 442
School Admissions 444
Exclusion from School 445
Universities 446
Conclusion 446

NEW ZEALAND
Paul Rishworth

Introduction 449
The Constitutional Framework 449
The Treaty of Waitangi 449
Parliamentary Supremacy and the Common Law Constitution 450
Reforms Under the Education Act 1989 452
The Rise of "Education Law" 455
School Governance Issues 455
Enrollments and Zoning 456
Discipline in Schools: Suspensions and Expulsions 458
Reckoning with the "Rights Revolution" 460
Anti-Discrimination Law in Education 463
Religion and Values in Education 464
State Funding of Religious Schools 466
Religious Values in the Curriculum 467
The Maori Dimension 467
Conclusion 469

SOUTH AFRICA
Izak Oosthuizen

Introduction 471
Background to the Legal System in South Africa 471
Legislation 471
The Constitution of South Africa 472
Original Legislation 472
The National Education Policy Act 473
The South African Schools Act 473
Employment of Educators Act 473
Subordinate Legislation 474

Common Law 474
Rules of National Justice 474
In Loco Parentis 475
Case Law 475
A Background to the Development of Educational Law in South Africa 476
Due Process and the Rules of Natural Justice 476
The Pre-Constitutional Period 476
Legitimate Expectations 477
The Post-Constitutional Period 478
Unfair Discrimination 481
The Pre-Constitutional Period 481
The Post-Constitutional Period 481
Teacher's Duty of Care 484
Earlier Years 484
More Recently 485
Corporal Punishment 486
The Pre-Constitutional Period 487
The Post-Constitutional Period 487
Conclusion 488

APPENDIX

Table of Cases 493
Cases by Jurisidiction 509
International Table of Cases 527
Index 533